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In re Application of
HERSH, et al.
Application No.: 09/701,797
PCT No.: PCT/US99/12433
Int. Filing Date: 03 June 1999
Priority Date: 03 June 1998
Attorney Docket No.: PA1675US
For: METHOD FOR INCREASED CONCURRENCY
IN A COMPUTER SYSTEM

DECISION ON RENEWED
PETITION UNDER
37 CFR 1.137(b)

This decision is in response to applicant's "Renewed Petitions" filed 02 April 2003 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 19 February 2003, applicant was mailed a decision dismissing applicant's petitions under 37 CFR 1.47(a) and 37 CFR 1.137(b). Applicant was afforded two months to file any request for reconsideration.

On 02 April 2003, applicant filed the present "Renewed Petitions."

DISCUSSION

As detailed in the decision mailed 30 May 2002, a petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant previously satisfied items (2), (3) and (4) above.

Regarding item (1), a proper reply in the present case would have been an executed declaration compliant under 37 CFR 1.497(a)-(b). Applicant presently submits that the combination of the declaration filed 27 November 2002 executed by inventor Clifford Hersh and

the declaration executed by Joan Todd filed on 16 January 2002 (Todd declaration) constitutes a proper reply pursuant to 37 CFR 1.67 and MPEP 602.02. Applicant states that, “[T]he PCT Legal Office has continuously rejected these declarations as imperfect citing the failure to list Clifford Hersh’s citizenship and mailing address on Joan Todd’s declaration as the imperfection.” Applicant’s statement is not correct. The declarations were not rejected because inventor Hersh’s citizenship and mailing address were not included on Joan Todd’s declaration, rather the Todd declaration contains deficiencies that could only be corrected by her or her legal representative. Specifically, 37 CFR 1.497(a)(3) requires that a declaration or oath identify each inventor and the country of citizenship of each inventor. The Todd declaration does not identify inventor Herbert Sullivan’s citizenship and does not identify Mr. Hersh as a joint inventor. 37 CFR 1.497(a)(4) requires that, “the person making the oath or declaration believes that the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.” Ms. Todd’s declaration does not state that she believes Hersh to be an original and first inventor and thus does not comply with 37 CFR 1.497(a)(4).

The Todd declaration also contains defects under 37 CFR 1.63. For example, the declaration does not contain a statement from Ms. Todd that she has reviewed and understands the contents of the application, including the claims as amended by any amendment specifically referred to in the oath or declaration; and that she acknowledges the duty to disclose to the USPTO all information known to her to be material to patentability as required by 37 CFR 1.63.

Mr. Hersh, not being a legal representative of Ms. Todd, cannot correct the above noted deficiencies in Ms. Todd’s declaration via a supplemental oath or declaration. Pursuant to 37 CFR 1.67(a)(2), a supplemental oath or declaration submitted for the purpose of correcting an error in a previously submitted oath or declaration must be signed by the inventor to the which the error or deficiency relates.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

CONCLUSION

Applicant’s renewed petition under 37 CFR 1.137(b) is **DISMISSED**.

If reconsideration on the merits of these petitions is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled “Renewed Petitions Under 37 CFR 1.137(b).” No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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